REMARKS/ARGUMENTS

Favorable reconsideration of the present application is respectfully requested.

Claim 1 has been amended responsive to the objection thereto. Specifically, it now recites that the counterweight has a recessed portion adjacent a surface thereof mounting the counterweight to the upper rotating body. Basis for this is evident, for example, in Figure 2.

Claims 5-7 were indicated as being allowable if rewritten in independent form. Claims 1-4 were rejected under 35 U.S.C. § 102 as being anticipated by Japanese Patent Publication 2001-348911. The Examiner there asserted that JP '911 discloses an elastic soundproof member 45 in Figure 7 of the reference. This rejection is respectfully traversed.

According to a feature of the invention set forth in the claims, a counterweight mounting structure for a construction machine includes an elastic soundproof member installed on the counterweight in such a manner that a part of the elastic soundproof member protrudes from an opening of a recessed portion of the counterweight. For example, referring to the non-limiting embodiment described in the specification, an elastic soundproof member 8, which could be made of foamed urethane resin, glass wool or a plastic material, is fit into the recessed groove 3d. Since the soundproof member is protected by the recessed groove, it is not damaged by the repeated mounting and dismounting of the counterweight, so that it is possible to maintain soundproofing for a long time.

JP '911 was cited in the European Search Report as an "A" category reference, i.e., one which is not particularly relevant if taken alone or in combination with another document, but is only relevant as an indicator of the general technological background. In fact, JP '911 has no teaching or suggestion for the claimed elastic soundproof member.

JP '911 generally discloses the mounting of a weight 21 to a swivel base 3 such that the weight can be easily positioned. As part of this, Figure 7 illustrates that the bolts 50 and 51 extend through a portion of the counterweight 21 and are threaded in a support member 45

fixed to the base frame 20, either directly or via the intermediary of a reinforcement portion 43 of the base plate.

However, there is no evidence in JP '911 that the support member 45 is elastic or has a soundproofing ability. First, it is noted that element 45 is described in paragraph [0017] of the reference as a support member, which suggests a rigid construction which is incompatible with an elastic soundproofing member. It is further noted that element 45 is illustrated with hatching indicating a metal material, which is also incompatible with elasticity or soundproofing. Finally, it is noted that the bolt 50 is threaded into the support member 45 in order to retain the counterweight in position (paragraphs [0017]-[0018]). An elastic material could not retain the bolt in the face of the high forces generated by a heavy counterweight. Thus, there is no evidence in the reference that the support member 45 of JP '911 is an elastic soundproof member.

It is further noted that although the Examiner has not alleged that the support member 44 or the base plate reinforcement 43 are elastic soundproof members, the above remarks apply equally well to these elements. Thus, there is no teaching in the reference for the claimed elastic soundproof member, and so all of the claims define over the prior art.

Applicants believe that the present application is in a condition for allowance and respectfully solicit an early Notice of Allowability.

Respectfully submitted,

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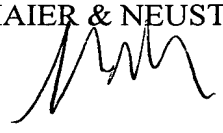

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